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In the Supreme Court of the United States

OCTOBER TERM, 1982

JUBA C. BELL,

Plaintiff-Respondent

V.

STATE FARM MUTUAL AUTOMOBILE INSURANCE, A/K/A STATE FARM FIRE AND CASUALTY COMPANY

Defendant-Petitioner

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Did the District Court err in holding inapplicable, with regard to an accident occurring in the State of Louisiana, the policy provisions of uninsured motorist insurance issued and delivered in the State of Florida to a Florida resident, restricting the underinsured motorist coverage thereunder to those instances where the liability insurance limits carried by the tort-feasor are less than the uninsured motorist coverage available to the injured party?

Did the District Court err in holding the choice-of-law rules of Louisiana require the substantive law of Louisiana be applied to the contract of insurance involved herein?

PARTIES TO THE PROCEEDING BELOW

The parties to the proceeding in the United States District Court were:

Juba C. Bell,

Plaintiff

State Farm Mutual Automobile Insurance Company A/K/A State Farm Fire and Casualty Company,

Defendant

Lizene Byoune, Jr.,

Defendant

Nita Bell,

Defendant in Cross-Claim

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OPINIONS BELOW

The opinion of the United States District Court for the Western District of Louisiana, Alexandria Division, entered on December 8, 1981, is recorded as *Juba C. Bell v. State Farm Fire and Casualty Company*, 527 F. Supp. 300 (USDC, WDLA, 1981).

The opinion of the United States Court of Appeals, Fifth Circuit entered July 16, 1982 is set out in the Appendix hereto.

STATEMENT OF JURISDICTIONAL GROUNDS

Suit was filed in the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana and removed to the United States District Court for the Western District of Louisiana pursuant to the provisions of 28 U.S.C. § 1332 (a) (1) (1976) and 28 U.S.C. § 1441 (a) (1948). Judgment was rendered by that Court on December 8, 1981. Defendant timely filed its Notice of Appeal to the Fifth Circuit Court of Appeals pursuant to the provisions of FRAP Rule 4. The opinion of the Court of Appeals affirming the judgment of the District Court was entered on July 16, 1982. Defendants petition for rehearing was denied on September 7, 1982. A stay order was granted by the Court of Appeals on September 21, 1982, granting a stay of mandate until October 21, 1982. The jurisdiction of the Supreme Court is envoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Florida Statute (1975) Section 627.727 (1) and (2)

627.727 Automobile liability insurance; uninsured vehicle coverage; insolvent insurer protection.

(1) No automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto in not less than the limits of the liability insurance purchased by the named insured for bodily injury, *(or such lower limits complying with the company's rating plan as may be selected by the named insured,) under provisions filed with and approved by the department, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided, however, that the coverage required under this section shall not be applicable when, or to the extent that, any insured named in the policy shall reject the coverage; and provided further, that when a vehicle is leased for a period of 1 year or longer and the lessor of such vehicle by the terms of the lease contract provides liability coverage on the leased vehicle in a policy wherein the lessee is a named insured or on a certificate of a master policy issued to the lessor, the lessee of such vehicle shall have the sole privilege to reject uninsured motorist's coverage. Unless the named insured, or lessee having the privilege of rejecting uninsured motorist's cover-

age, requests such coverage in writing, the coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to him by the same insurer. The coverage provided under this section shall be excess over but shall not duplicate the benefits available to an insured under any workmen's compensation law, disability benefits law, or any similar law; under any automobile liability or automobile medical expense coverages; or from the owner or operator of the uninsured motor vehicle or any other person or organization jointly or severally liable together with such owner or operator for the accident. Such coverage shall not inure directly or indirectly to the benefit of any workmen's compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workmen's compensation or disability benefits law or any similar law.

(2) For the purpose of this coverage, the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle when the liability insurer thereof:

(a) Is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency; or

(b) Has provided limits of bodily injury liability for its insured which are less than the limits applicable to the injured person provided under his uninsured motorist's coverage.

D. The following provisions shall govern the issuance of uninsured motorist coverage in this state.

(1)(a) No automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in not less than the limits of bodily injury provided by the policy, under provisions filed with and approved by the commissioner of insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured or underinsured motor vehicles because of bodily injury, sickness, or disease, including death resulting therefrom; provided, however, that the coverage required under this Subsection shall not be applicable where any insured named in the policy shall reject in writing the coverage or selects lower limits. Such coverage need not be provided in or supplemental to a renewal or substitute policy where the named insured has rejected the coverage or selected lower limits in connection with a policy previously issued to him by the same insurer. Any document signed by the named insured or his legal representative which initially rejects such coverage or selects lower limits shall be conclusively presumed to become a part of the policy or contract when issued and delivered, irrespective of whether physically attached thereto.

* * * * * * *

(2)(b) For the purposes of this coverage the term uninsured motor vehicle shall, subject to the terms and conditions of such coverage, also be deemed to include an insured motor vehicle when the automobile liability insurance coverage on such vehicle is less than the amount of damages suffered by an insured and/or the passengers in the insured's vehicle at the time of an accident, as agreed to by the parties and their insurers or as determined by final abjudication.

* * * * * * * *

Louisiana Civil Code

Article 10

The form and effect of public and private written instruments are governed by the laws and usages of the places where they are passed or executed.

But the effect of acts passed in one country to have effect in another country, is regulated by the laws of the country where such acts are to have effect.

The exception made in the second paragraph of this article does not hold, when a citizen of another State of the Union, or a citizen or subject of a foreign State or country, disposes by will or testament, or by any other act causa mortis made out of this State, of his movable property situated in this State, if at the time of making said will or testament, or any other act causa mortis, and at the time of his death, he resides and is domiciliated out of this State.

Restatement Second, Conflict of Laws,
Copyright by the American Law Institute (1971)

I. *The General Principle.*

§ 6. Choice-of-Law Principles

(1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.

(2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include

(a) the needs of the interstate and international systems,

(b) the relevant policies of the forum,

(c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,

(d) the protection of justified expectations.

STATEMENT OF THE CASE

Jurisdiction of the District Court was sought pursuant to the provisions of 28 U.S.C. § 1332 (a)(1) (1976) and 28 U.S.C. § 1441 (a) (1948).

Plaintiff's 22 year old son, Robin Bell, was killed as a result of an automobile accident which occurred in Rapides Parish, Louisiana on February 8, 1980, when the vehicle in which he was riding as a guest passenger, owned and driven by Raymond Giroux, was struck in the rear by an automobile owned and operated by Lizene Byoune, Jr. At the time of the accident, both Robin Bell and Raymond Giroux were serving in the United States Air Force, stationed at England Air Force Base near Alexandria.

Plaintiff, Juba C. Bell, and his former wife, Nita Bell, the mother of the decedent, were divorced prior to the accident. Nita Bell is a citizen and resident of the State of California. Robin Bell, prior to his entry into the service, resided with his mother at the domicile in San Bernadino County, California.

Plaintiff, a citizen and resident of the State of Florida residing at Pensacola, Florida, instituted this action to recover damages for the alleged wrongful death of his son, on January 21, 1981 in the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana, against Lizene Byoune, Jr. and State Farm Mutual Automobile Insurance Company, as the liability insurer of the alleged

tort-feasor, Lizene Byoune, Jr., and also as the uninsured motorist insurer of Raymond E. Giroux, in whose automobile plaintiff's son was riding at the time of the accident. When the certified copy of the policy of insurance issued to Raymond Giroux was received to be filed in evidence pursuant to stipulation, it was discovered that State Farm Fire and Casualty Company, instead of State Farm Mutual Automobile Insurance Company, had written the policy. On August 26, 1981 a stipulation was entered into by the parties substituting State Farm Fire and Casualty Company for State Farm Mutual Automobile Insurance Company in the litigation. (TR. p. 75)

Lizene Byoune, Jr. is a citizen and resident of the State of Texas, and at the time of the accident, the 1978 Cadillac automobile which he was driving bore Texas License Number REV 370 and his drivers license was issued by the State of Texas and bore Number 8785880.

Raymond E. Giroux is a citizen and resident of the State of Florida. At the time of the accident the 1979 Chevrolet owned and operated by him was licensed for operation in the State of Florida and bore Florida License Plate Number HSW 849. Raymond Giroux was licensed to drive by the State of Florida, and his drivers license bore Florida Number G620-725-57-421.

State Farm Mutual Automobile Insurance Company is an insurance corporation domiciled in the State of Illinois and is authorized to do and doing business in the

States of Illinois, California, Texas, Louisiana and Florida, as well as other states of the union. It issued a policy of automobile liability insurance to Lizene Byoune in the State of Texas, affording per person bodily injury liability coverage of $25,000.00, and that amount has been paid to the parents of Robin Bell in accordance with an agreement reached between the parents as to the amount each would receive.

State Farm Fire and Casualty Company is an insurance corporation domiciled in the State of Illinois and is authorized to do and doing business in the States of Illinois, California, Texas, Louisiana and Florida, as well as other states of the union; it issued its Policy Number S83-1692-59 to Raymond E. Giroux, 1448D Bogsford, Port Orange, Florida 32019, affording liability and uninsured motorist coverage on his 1979 Chevrolet automobile with per person uninsured motorist limits of $10,000.00.

The policy of insurance issued by State Farm Fire and Casualty Company to Raymond E. Giroux defines "Uninsured Motor Vehicle" in pertinent part as follows:

"*Uninsured Motor Vehicle* - Means:

* * * * *

2. A land motor vehicle insured or bonded for bodily injury liability at the time of the accident; but

* * * * *

b. The limits of liability are less than the limits of uninsured motor vehicle cover-

age that apply to the insured; or***"

(Exhibit 1, P. A-10.)

On February 19, 1981 removal of the State Court proceeding was had to the United States District Court for the Western District of Louisiana.

On March 23, 1981, State Farm Mutual Automobile Insurance Company filed its answer to the plaintiff's complaint and in its capacity as the liability insurer for Lizene Byoune, Jr. made a counter-claim and cross-claim for interpleader depositing its $25,000.00 policy limits on the Byoune vehicle into the registry of the Court. On March 31, 1981, answer was filed on behalf of Lizene Byoune, Jr.

Initially, the United States of America was made a defendant in the interpleader, but it was subsequently dismissed on its representation that it had been paid everything that was due to it arising out of the accident.

The mother of the decedent, Nita Bell, was likewise initially named as a defendant in the interpleader, and on June 23, 1981, in a joint pleading on behalf of plaintiff, Juba Bell and Nita Bell, the funds deposited in connection with the interpleader were withdrawn, with the mother receiving $15,213.70, or sixty percent of the proceeds, and plaintiff receiving $10,142.46, or forty percent of the proceeds, and reserved his rights to proceed against the uninsured motorist carrier on the Giroux vehicle.

By order dated June 23, 1981, the lower Court authorized the withdrawal by the defendants in interpleader in the stipulated amounts.

Subsequently, motions for summary judgment were submitted to the Court on written memoranda on behalf of both plaintiff and defendant in its capacity as the uninsured motorist carrier for Raymond Giroux. On December 8, 1981, the Honorable Edwin F. Hunter, Jr. entered judgment denying defendants' motion for summary judgment and granting plaintiff's motion for summary judgment.

On January 4, 1982, State Farm Fire and Casualty filed its notice of appeal.

On July 16, 1982, the Honorable Albert Tate, Jr. on behalf of the United States Court of Appeal for the Fifth Circuit affirmed the judgment of the District Court. Subsequently, defendant petitioned for a rehearing and on September 7, 1982 defendant's petition was denied.

ARGUMENT

The holding of the District Court affirmed by the Court of Appeals permits plaintiff to recover in this action. To reach this conclusion, the Court ignores the clear, unambiguous provisions of a contract of insurance issued and delivered in Florida to a Florida resident, the provisions of Louisiana's choice-of-law statute and the first principal of

the Restatement Second, Conflicts of Law.

The policy of insurance issued by defendant to Raymond Giroux afforded uninsured motorist limits of $10,000.00 each person and $20,000.00 each occurrence. The tort-feasor, Lizene Byoune, Jr., carried liability insurance limits in the amount of $25,000.00 each person and $50,000.00 each occurrence. The full $25,000.00 per person limit has been paid to the parents of Robin Bell. Florida law [Section 627.727(1) Florida Statute (1975)] as interpreted by the Supreme Court of Florida in *Dewberry v. Auto Owners Insurance Company*, 363 So.2d 1077 (Fla. 1978) provides that where the limits of liability insurance carried on the tort-feasor's vehicle are greater than the limits of the uninsured motorist's coverage, the tort-feasor's vehicle does not constitute an insured motor vehicle and no *under*insurance coverage is available. As was stated in the *Dewberry* case, supra, at page 1081:

> The statute was only intended to allow the insured the same recovery which would have been available to him had the tort-feasor been insured to the same extent as the insured himself.

The District Court correctly states that in diversity actions on insurance contracts such as the one herein involved, the Federal Courts must apply the choice-of-law rules of the forum. *Bluebird Body Company v. Ryder Truck Rental*, 583 F.2d 717 (USCA 5th 1978); *Lee v. Hunt*, 631 F.2d 1171 (USCA 5th 1980); *Klaxon Company v. Stentor Electric Manufacturing Company, Inc.*, 313 US 487, 61

S.Ct. 1020, 85 L.Ed. 1477 (1941). However, the Court incorrectly classifies the issue at bar as "tort litigation." It is not. It is a matter of interpretation of the terms of the contract. Louisiana's choice of law statute governs the situation. Louisiana Civil Code Article 10 as amended and reenacted by Act 71 of 1979, effective January 1, 1980, provides in pertinent part:

> Article 10. The form and effect of public and private written instruments are governed by the law and usages of the place where they are passed or executed. ***

The most recent decision of the Louisiana Supreme Court with reference to the law applicable to insurance contracts and particularly uninsured motorist coverages is found in the case of *Deane v. McGee*, 261 La. 684, 260 So.2d 668 (La. 1972) where the Court stated:

> The contention has been made on this review that the law of Louisiana and not that of Florida, should have been applied in this case. The contention is without merit. The Court of Appeal properly applied Florida law to the State Farm policy.

The *Deane* Court then went on to cite Article 10 of the Louisiana Civil Code and then stated:

> Generally, the nature, validity and interpretation of an insurance contract is governed by the law of the place where made unless the parties clearly appear to have some other place in view. ***

The Fifth Circuit previously held to the same effect in *Aetna Casualty and Surety Company v. Evers*, 590 F.2d 600 (USCA 5th 1979); *Sprow v. Hartford Insurance Company*, 594 F.2d 418 (USCA 5th 1979), and *Shockley v. Sallows*, 615 F.2d 233 (USCA 5th 1980).

It is true that in the Louisiana Appellate Court decision of *Sutton v. Langley*, 330 So.2d 321 (La. App. 2nd Cir. 1976) the Court totally disregarded the provisions of Louisiana Civil Code Article 10 and adopted, with reference to an insurance contract case, the "interest analysis" theory espoused in the tort case of *Jagers v. Royal Indemnity Company*, 276 So.2d 309 (La. 1973). It erred in doing so. The *Jagers* case stands for the proposition that in a tort case Louisiana has abandoned the lex loci delicti doctrine and espoused the interest analysis approach of the Restatement Second, Conflict of Laws. This is entirely appropriate with respect to tort litigation since Louisiana has no specific choice of law statute with respect to torts. However, it has no application where a choice-of-law statute exists. This is reinforced by the first principle of the Restatement Second, Conflict of Laws, which provides:

> § 6. Choice-of-Law Principles
>
> (1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.

Had this principle been applied, the District Court would correctly have turned to Civil Code Article 10, and,

following its directive, applied Florida law. Instead, it cited and relied upon *Allstate Insurance Company v. Hague*, 449 US 302 66 L.Ed.2d 521, 101 S.Ct. 633 (1980) for the proposition that the application of the substantive law of the forum state to an insurance policy issued and delivered in a sister state is not violative of the due process or full faith and credit clauses of the United States Constitution. We do not interpret the cited case as so holding where the clear and unambiguous provisions of the policy do not afford such coverage. While the plurality opinion in that case does not clearly state what the policy provisions being interpreted were, it is noted from Justice Stevens' concurring opinion that the policy there involved neither allowed nor prohibited stacking. The concurring opinion states (449 US 324);

> The question on the merits is one of interpreting the meaning of an insurance contract. Neither the contract itself, nor anything else in the record, reflects any express understanding of the parties with respect to what law would be applied or with respect to whether the separate uninsured motorist coverage for each of the decedent's three cars could be "stacked". Since the policy provided coverage for accidents that might occur in other states, it was obvious to the parties at the time of contracting that it might give rise to the application of the law of states other than Wisconsin. Therefore, while Wisconsin may have an interest in ensuring that contracts formed in Wisconsin in reliance upon Wisconsin law are interpreted in accordance with that law, that interest is not implicated in this case.

In the instant case, it is clear from the policy provisions that the Florida definition of the term "Uninsured Motor Vehicle" was selected and incorporated into the policy rather than the Louisiana definition of the term "Uninsured Motor Vehicle" as set forth in LSA-R.S. 22:1406D(2)(b).

The facts presented in this case are not unlike the facts presented to the Louisiana Appellate Court in the case of *Powell v. Warner,* 398 So.2d 22 (La. App. 4th Cir. 1981). In that case, plaintiffs, citizens and residents of the State of Mississippi and insured for uninsured motorist coverage under policies of insurance issued and delivered in the State of Mississippi, were rear-ended in Metairie, Louisiana by Pamela Warner, who, one month prior to the accident, began living with her aunt in Metairie, and who, two weeks after the accident, returned to her home in Mississippi. The automobile she was driving was registered in Mississippi, and her insurance with Allstate was bought while she was living in Mississippi.

After suit was instituted but before trial, plaintiffs settled with Pamela Warner and Allstate Insurance Company, reserving their rights as against their own uninsured motorist carriers, Commercial Union Insurance Company and Mississippi Farm Bureau Insurance Company. Those two companies both filed motions for summary judgment on the grounds that under Mississippi law, no *under*insurance was afforded. In affirming the Trial Court's grant of summary judgment to both defendants, the Appellate

Court in pertinent part stated:

> Here plaintiffs had the protection afforded by Warner's Allstate policy, however nominal in amount. Warner's policy conformed with Mississippi law and exceeds the minimum Louisiana statutory requirements. Plaintiffs are not seeking uninsured motorist coverage, as in *Sutton* [*Sutton v. Langley*, 330 So.2d 321 (La. App. 2nd Cir. 1976)], but rather asks that underinsurance limits be created and judicially added to the policies which they purchased.
>
> Lex Loci Delicti no longer governs, and we find no basis to consider a "false conflict" as in *Jagers* [*Jagers v. Royal Indemnity Company*, 276 So.2d 309 (La. 1973)], supra, nor was the alleged tortfeasor uninsured as in *Sutton*, supra. Further, the "interest analysis" is not applicable since we are not confronted with a choice of law under Restatement Second, Conflict of Laws, Section 6.
>
> Louisiana has provided statutorily for resolution of appellant's position. LSA-CC Article 10 states:
>
> > "The form and effect of public and private written instruments are governed by laws and usages of the places where they are passed or executed."
>
> * * * * * *
>
> Plaintiffs cannot invoke the uninsured provisions of their policies to add to the underinsured provisions of Louisiana law. The pleadings and record present no question of material fact, and the motions for summary judgment by Commercial Union and Mississippi Farm were properly granted.

In the instant case, the District Court, classified the matter as a true conflict. It is in fact, a false one.

In *Highlands Insurance Company v. Employers Surplus Lines Insurance Company*, 497 Fed.Sup. 169 (USDC E.D. La., 1980) that Court stated:

> Interest analysis is a two-step process whereby the Court must first determine whether a true or false conflict exists. If a true conflict exists, the Court applies the significant contacts approach of the Restatement Second of Conflicts of Law to determine which of the competing State's interests is dominant and hence prevailing. See *Ardoyno*, supra (*Ardoyno v. Kyzar*, 426 Fed.Sup. 78 (E.D., La., 1976)) at 81. If the alleged conflict is a false one, however, there is no need for such analysis, the Law of a State having no interest in a given matter is of course not to be applied to that matter.

In the *Highlands* case, as in this one, by the time it came on for hearing, the only parties interested were nonresidents of the State of Louisiana, and all interests of residents of the State of Louisiana had been satisfied. The Court held there that there was a false conflict raised, and therefore the Law of Texas or Massachusetts was controlling in interpreting the provisions and effect of the insurance contracts. In doing so, the Court stated:

> While we agree with Highlands that Louisiana has an interest in seeing that expectations of its resident claimants and insureds are met within the limits of insurance policies, these interests are

> satisfied when Highlands (a) assumed the liability for Ward as tort-feasor, and (b) compensated Smith for his injuries. The Court recognizes that Louisiana's interest could predominate in cases in which the payment by the insurer to the Louisiana claimant or on behalf of the Louisiana insured would be affected by the enforcement of the reinsurance contract. In the present factual situation, however, Louisiana interests ceased upon the full payment of Ward's claim on the policy following Smith's accident.
>
> The conflict here, therefore, is a false one. The Law of Texas or Massachusetts must control.***

Having determined the matter to be a true conflict situation, the Court relied for a resolution on some of the principles of the Restatement Second, Conflict of Laws. Although this analysis should not have been required, properly considered, these principles also point to the application of Florida law.

In addressing the principle of "the needs of the interstate system" the District Court fails to recognize that this interest does not refer to interstate automobile traffic. It refers to a system of laws on various subjects and is concerned with the need of each state to consider and integrate its rights into a system that will make the choice-of-law field an orderly one. Disregard of this consideration ultimately produces interstate friction which may result in retaliation. Louisiana's conflict of laws statute is a clear attempt by this state to recognize this element.

Florida has the paramount interest in this matter, since the contract was entered into in that state between the Company and a resident of that state and was intended to cover an automobile registered in that state. Florida's Supreme Court has clearly stated its policy relevant to the uninsured motorist provisions of a policy of insurance in the *Dewberry* case, supra, at page 1081 where it stated:

> It (the statute) could not have been intended to place the insured who is injured by an uninsured motorist in a better position than one who is harmed by a motorist having the same insurance as the insured.

While Louisiana likewise has an interest in seeing that the terms of a contract are upheld, it has no interest in changing the terms of a contract confected in Florida and sued on by a Florida resident by application of its own statute governing uninsured motorist provisions of an insurance policy.

In considering the next principle of the Restatement Second, Conflicts of Law, "relevant policies of the forum," the District Court correctly points out that Louisiana has a significant interest in the safety and welfare of the motoring public on Louisiana highways. It also has a significant interest in providing a method of recovery for damages incurred by those who may be injured on the state's highways. However that is not the issue at bar. The issue is one concerning the interpretation of the uninsured motorist provisions of a contract and the determination to

be made is whether or not the plaintiff may recover on the basis of a contract of insurance which exists secondarily to liability insurance provided by the tort-feasor. The interests cited by the court of a possible need by injured persons to avail themselves of the services of Louisiana's doctors or hospitals are properly considered when the issue is a matter of tort. The interests to be considered relative to the present issue are entirely different. Clearly, Florida's interest in the contract of insurance at issue outweighs those of Louisiana. Louisiana has *no* interest in this insurance policy. It was not confected nor delivered in Louisiana, nor does it govern the interests of a Louisiana resident. Louisiana's Uninsured Motorist Statute (LSA-R.S. 22:1406D) is, by its provisions, applicable only to policies delivered or issued for delivery in Louisiana and with respect to motor vehicles registered or principally garaged in this State (LSA-R.S. 22:1406D(1)(a)) and with reference to underinsured motor vehicles is "***subject to the terms and conditions of such coverage***" (LSA-R.S. 22:1406D (2)(b)). Application of the forum state's uninsured motorist statute to this contract of insurance issued and delivered in Florida so as to void specific policy provisions, valid under Florida law, constitutes arbitrary action and is fundamentally unfair to the insurer. The effect of applying Louisiana's Uninsured Motorist Statute so as to negate clear, unambiguous, specific policy language is violative of the due process and full faith and credit clauses of the United States Constitution.

The Court then addresses the consideration of "the

protection of justified expectations." The law of the state chosen to be applied under this consideration must have a substantial connection with the relevant aspects of the insurance transaction. In the instant case Louisiana has none. While Louisiana had contact with the accident resulting in this litigation, in that the accident occurred on a Louisiana highway, and may have an interest in providing the litigant with a forum, and State Farm Fire and Casualty Company has reason to recognize that it may be sued in a state where it is doing business, the issue is not one of jurisdiction. Relevant to this principle are the various factors recognized by the District Court concerning the policy which make it clear that State Farm Fire and Casualty, as well as Raymond Giroux, have a justifiable expectation that, although sued in Louisiana, they can assume that Florida law will apply where, as the District Court stated:

> The policy was issued and delivered to a Florida citizen then residing in Florida. Florida has concern for the interest of the insured in the scope and nature of the obligations which bind as well as protect him. The premium payable by the insured under this policy vary directly with the losses paid by the insurer, and to that extent the insurer has a stake in the uninsured motorist clause of the policy.

CONCLUSION

The District Court has created underinsurance motorist coverage for plaintiff when none is provided in the

policy nor is any provided under the law of the State where the policy was issued and delivered. Although Louisiana has an interest in providing a forum for the litigants, the occupants of the Giroux vehicle were employees of the United States Air Force, and thus Louisiana did not have any work-related contact with the accident. The parties involved in the accident were all citizens of states other than Louisiana. Policies of insurance were all issued in states other than Louisiana, and the parties litigant are all nonresidents of the State of Louisiana. It is submitted that for the reasons hereinabove set forth there is insufficient contact with the State of Louisiana for the substantive law of Louisiana to be applied to the insurance policy herein involved. In view of the above and foregoing argument and authorities, it is respectfully submitted that the judgment of the District Court and the Court of Appeals should be reversed, the motion for summary judgment on behalf of the plaintiff denied, and the motion for summary judgment on behalf of the defendant granted.

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ATTORNEY FOR DEFENDANT-APPELLANT

PROOF OF SERVICE

I, DeWitt T. Methvin, Jr., Attorney for State Farm Mutual Automobile Insurance Company, A/K/A State Farm Fire and Casualty Company, Defendant-Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that I served copies of the foregoing Petition for Certiorari on Juba C. Bell by mailing three copies thereof, duly addressed and postage prepaid to his attorney of record, Robert B. Neblett, Post Office Box 1190, Alexandria, Louisiana, 71301, this _____ day of October, 1982.

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DeWitt T. Methvin, Jr.